UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff,

v. Criminal Action No. 3:19-cr-64-DJH

IVAN E. CAULDER, Defendant.

* * * * *

ORDER

Defendant Ivan Caulder is charged with being a convicted felon in possession of a firearm. Caulder was arrested after an officer, following a tip regarding a possible drunk driver, approached his car and saw a handgun and a bottle of liquor in plain view. Caulder has moved to suppress any evidence obtained from the stop, claiming it is the fruit of an illegal search. (Docket No. 20) For the reasons stated below, the Court will deny his motion.

I.

On the evening of November 5, 2018, Louisville Metro Police Department Officer Demetrius Latham was standing outside of his division's headquarters and speaking with his supervisor when a vehicle pulled into the parking lot. (D.N. 28, PageID # 61) The vehicle's unidentified occupants informed the officers that a "black guy in a black [F]ord Fusion"[1] appeared

[1]The parties dispute whether the exact verbiage of the tip was a "black Ford Fusion" or a "dark sedan." Latham did indicate on his citation and investigative report that the tip was for a "dark sedan," but he clarified during his testimony at the suppression hearing that he recalled the tip being a "black Ford Fusion," that it was a mistake not to have listed exactly what the tip described, and that he shortened the description on his accident report and citation because he had just experienced a serious physical altercation and had "a lot of things going on." (D.N. 28, PageID # 76) The Court found his explanation for the discrepancy credible. *See United States v. Sweeney*, 402 F. App'x 37, 42 (6th Cir. 2010) (holding that the district court's determination of an officer's testimony in a suppression hearing is entitled to deference and collecting cases holding that the district court is the preferred forum for weighing witness credibility). The Court also notes that both descriptions are consistent with the car Caulder was driving that night (a black Ford Fusion) and thus corroborated the tip.

to be driving drunk down a nearby street and was crashing into parked cars. (*Id*.) Latham headed out to investigate and observed a black Ford Fusion, driven by a man later identified as Caulder, with front-end damage "just steadily going forward and back, as if he was trying to parallel park, but there would have been no need to parallel park, because there were no cars near him." (*Id*., PageID # 63) Latham parked and approached the vehicle on the passenger side, using a flashlight to peer through the window. (D.N. 23, 00:07–00:12) This quick scan of the car's interior revealed a handgun on the passenger seat and a bottle of liquor in the cupholder; Latham immediately opened the unlocked passenger door and secured the handgun. (*Id*., 00:14–00:17) Latham then detained Caulder until a second officer arrived. (*Id*., 00:19–02:25)

While waiting for his backup, Latham observed Caulder slurring his speech and making uncoordinated hand movements. (*Id*., 01:27–02:03; D.N. 28, PageID # 67) ("I had already determined that based on the way he was talking and his movements and stuff that he was intoxicated and that I was going to arrest him, yes.") Latham informed Caulder that he was being arrested for Driving Under the Influence but that Latham was waiting for backup, and repeatedly told Caulder to keep his hands still and where Latham could see them, orders that Caulder refused to heed. (D.N. 23, 01:40–02:25) Backup arrived, and when the officers tried to remove him from the car, Caulder resisted violently, striking one officer in the face. A physical altercation ensued, during which Caulder was tasered several times. (*Id*., 02:42–03:51) After the officers successfully handcuffed Caulder, additional officers arrived to assist with Caulder's arrest. (*Id*., 04:42–5:31) Caulder continued to disregard the officers' instructions and repeatedly threatened and insulted them. (*Id*., 07:13–09:58; 18:10–18:20; 20:26–20:40)

In connection with the November 8 stop, Caulder was charged with possessing a firearm as a convicted felon. (D.N. 1, PageID # 1) Caulder seeks to suppress any evidence seized during

the stop, alleging that his initial detention by Latham was improper and that any evidence seized subsequent to that detention should therefore be excluded as fruit of the poisonous tree. (D.N. 20, PageID # 40) The government responded. (D.N. 22) The Court held an evidentiary hearing on the matter (D.N. 25), and Caulder submitted a supplemental motion. (D.N. 27)

Caulder contends that Latham lacked reasonable suspicion to detain him for the initial traffic stop and thus all of the evidence that flowed from the stop must be suppressed. (D.N. 20, PageID # 39–40) The Court is unpersuaded by Caulder's argument.

II.

The Fourth Amendment allows for a limited range of interactions between police and citizens: "consensual encounters in which contact is initiated by a police officer without any articulable reason whatsoever and the citizen is briefly asked some questions; a temporary involuntary detention or *Terry* stop which must be predicated upon 'reasonable suspicion'; and arrests which must be based on probable cause." *United States v. Carr*, 355 F. App'x 943, 945 (6th Cir. 2009) (citing *United States v. Bueno*, 21 F.3d 120, 123 (6th Cir. 1994)); *see Terry v. Ohio*, 392 U.S. 1 (1968). Reasonable suspicion "can be established with information that is different in quantity and content than that required to establish probable cause," *Alabama v. White*, 496 U.S. 325, 330 (1990), and the "level of suspicion required for a *Terry* stop is obviously less demanding than that for probable cause." *United States v. Sokolow*, 490 U.S. 1, 7 (1989). The reviewing court must consider the "totality of the circumstances of each case to see whether the detaining officer ha[d] a particularized and objective basis for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (internal quotation marks and citations omitted).

A police officer may lawfully stop a motorist if he has reasonable suspicion that a crime or traffic infraction has just occurred or is ongoing. *See United States v. Collazo*, 818 F.3d 247, 253

(6th Cir. 2018); *United States v. Townsend*, 305 F.3d 537, 541 (6th Cir. 2002) ("A police officer may effect a traffic stop of any motorist for any traffic infraction, even if the officer's true motive is to detect more extensive criminal conduct."); *see also Whren v. United States*, 517 U.S. 806, 812–13 (1996). Tips with "sufficient indicia of reliability" may also contribute to an officer's reasonable suspicion, and "when the tip cannot be verified because it is anonymous, the Supreme Court recognizes the probative value of corroboration of details of an informant's tip by independent police work." *Robinson v. Howes*, 663 F.3d 819, 828 (6th Cir. 2011) (quoting *Illinois v. Gates*, 462 U.S. 213, 241 (1983), and citing *Florida v. J.L.*, 529 U.S. 266, 270 (2000)).

Officer safety concerns are another well-established and "integral factor in the *Terry*-stop equation." *United States v. Campbell*, 549 F.3d 364, 372 (6th Cir. 2008). When determining if a warrantless search or seizure was justified, the court must ask "whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Terry*, 392 U.S. at 27. As such, as long as an officer was standing in a place he was legally entitled to be, that officer's observation of a gun inside a vehicle justifies a warrantless seizure of the gun if "a reasonable officer would believe, based on specific and articulable facts, that the weapon poses an immediate threat to officer or public safety." *United States v. Bishop*, 338 F.3d 623, 628 (6th Cir. 2003). The automobile exception provides an extra layer of insulation for officers conducting traffic stops; if "an officer has a safety concern based upon an actual suspicion that a weapon is present in a vehicle," he may search the passenger compartment of the vehicle for additional weapons because of the hazardous nature of roadside stops. *United States v. Slater*, 81 F.3d 162, *3 (unpublished table decision) (citing *Michigan v. Long*, 463 U.S. 1032, 1049 (1983)); *see also United States v. Galaviz*, 645 F.3d 347, 357 (6th Cir. 2011) (holding that

the automobile exception justified warrantless search of defendant's vehicle after officers observed a gun in plain view).

A. Reasonable Suspicion for *Terry* Stop

The Court must consider all facts and construe them based on the totality of the circumstances when determining whether Officer Latham had reasonable suspicion to make the initial investigatory stop of Caulder. *Tillman*, 543 F. App'x at 561 (citing *Joshua v. DeWitt*, 341 F.3d 430, 443 (6th Cir. 2003)). Latham received a tip that an African-American man driving a black Ford Fusion was behaving in a manner consistent with drunk driving, crashing into parked cars. (D.N. 28, PageID # 61) This information was then corroborated when Latham witnessed a car matching that description nearby. The car had front-end damage, further corroborating the tip that the car had been striking vehicles, and Latham personally observed the car moving back and forth, as if to parallel park, on a street with no other parked cars. (*Id*., PageID # 63) Despite Caulder's assertion to the contrary (D.N. 20, PageID # 40), Latham saw evidence of drunk driving. *See United States v. Jackson*, 573 F. App'x 401, 405 (6th Cir. 2014) (holding that officer's observation of erratic driving and the time of night established reasonable suspicion to detain defendant for DUI). These observations indicated that the crime of DUI had just occurred or was ongoing and justified stopping Caulder. *Collazo*, 818 F. 3d at 253; *see also United States v. Roberts*, 986 F.2d 1026, 1029–30 (6th Cir. 1993) (officer had reasonable suspicion to detain defendant for drunk driving after receiving complaint defendant was drunk, absence of cars at residence, and observation of car driving erratically); *Gaddis v. Redford Twp*., 364 F.3d 763, 771 (6th Cir. 2004) (holding that vehicle swerving to touch the dividing line on the road twice, without more, was enough to establish reasonable suspicion of drunk driving).

The Court acknowledges that the tip is entitled to less weight in light of its anonymous source. *See United States v. Merrell*, 330 F. App'x 556, 561 (6th Cir. 2009) (citing *United States v. Carpenter*, 360 F.3d 591, 595 (6th Cir. 2004), and *United States v. Campbell*, 256 F.3d 381, 388 (6th Cir. 2001), for the proposition that an uncorroborated anonymous tip alone does not provide probable cause); *cf. Gates*, 462 U.S. at 244 (corroboration of some tip details indicates that other details are also true). Nevertheless, the highly particularized nature of the tip enhances its credibility. *See United States v. Williams*, 483 F. App'x 21, 25 (6th Cir. 2012) ("Tips that provide specific details or predictions of future action fall higher on the reliability scale because they suggest the existence of knowledge to which the public might not have access.") (citing *White*, 496 U.S. at 332 (1990)); *see also Gates*, 462 U.S. at 233–34 (explaining need to balance factors of informant's reliability and basis of knowledge). The anonymous tip Latham received from a citizen, standing alone, may not have provided enough basis for reasonable suspicion. But the tip in conjunction with Latham's real-time identification of a vehicle matching the exact description from the tip, in the immediate area, bearing front-end damage, and then independently observing evidence of drunk driving, taken together provide ample basis for reasonable suspicion to conduct an investigatory stop of the vehicle. *See Gaddis*, 364 F.3d at 771 (finding a stop for suspected DUI constitutional under the reasonable suspicion standard after evaluating the "totality of the circumstances—the whole picture" (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)); *see also United States v. Pacheco*, 841 F.3d 384, 392–93 (6th Cir. 2016) ("[t]he Supreme Court has declined to hold that reasonable suspicion can never be created by an anonymous tip.").

Because the Court has concluded that Latham's initial stop of Caulder was appropriate, it must next determine whether Latham's seizure of the gun was justified. The key inquiry is whether a reasonable officer in Latham's position would have believed that he or the public was at risk of

harm. *Terry*, 392 U.S. at 27. Latham approached the car because he suspected the driver of operating the vehicle while intoxicated. (D.N. 28, PageID # 69–70) Using a flashlight,[2] Latham observed a bottle of dark liquor in the cupholder and a handgun lying on the seat next to Caulder. (D.N. 23, 00:07–00:12) A review of the officer's body camera video shows that the gun was in plain sight and readily available to Caulder. (*Id*.) Latham's observations, in conjunction with the suspicion of DUI and the late hour, would lead a reasonable officer to fear that the car's driver was intoxicated, potentially dangerous, and armed. *See Jackson*, 573 F. App'x at 405 (finding that the evidence supported officer's reasonable suspicion that he was in danger because defendant was possibly intoxicated, the stop was late at night, and defendant ignored his requests). Under these circumstances, Latham's quick decision to seize the handgun was prudent. Caulder refused to keep his hands still and in Latham's view (D.N. 23, 01:40–02:25), which could also contribute to a reasonable officer's fear for his safety. *United States v. Tillman*, 543 F. App'x 557, 561 (6th Cir. 2013) (holding that the defendant's refusal to keep his hands still gave "significant weight" to the officer's decision to detain and pat down defendant for fear defendant possessed a gun).

B. Plain-View Exception

Even if Officer Latham did not fear for his safety, or if the gun had not been present, Latham would still have been authorized to seize the liquor bottle without a warrant. The Supreme Court requires that three conditions be satisfied to uphold a warrantless seizure under the plain-view exception:

> (1) the seizing officer must not have violated the Fourth Amendment in "arriving at the place from which the evidence could be plainly viewed"; (2) the item must not only be in plain sight, but "its incriminating character must also be immediately apparent"; and (3) the officer must be lawfully located in a place from which the

[2] Use of a flashlight to peer into a car's interior does not negate the plain-view exception to warrantless searches. *See Texas v. Brown*, 460 U.S. 730, 739–40 (1983) (plurality) (upholding officer's plain-view search despite his utilization of a flashlight).

> object can be plainly seen, and he must also have a lawful right of access to the object itself.

United States v. Hunter, 333 F. App'x 920, 925 (6th Cir. 2009) (quoting *Horton v. California*, 496 U.S. 128, 136–37 (1990)). All three of these conditions are satisfied here. First, as explained above, Latham had reasonable suspicion of DUI to detain Caulder for an investigatory stop, so no Fourth Amendment violation occurred. The bottle of liquor was in plain view in the cupholder, potentially violating Kentucky's open-container law, Ky. Rev. Stat. § 189.530(2), and providing evidence of DUI. Third, Latham was legally positioned outside Caulder's passenger window when he shined his flashlight inside and saw the bottle. Thus, the initial detention for DUI and the subsequent search and seizure of the liquor bottle were appropriate under the plain-view exception.

C. Automobile Exception

Latham's seizure of the gun and liquor bottle was also appropriate under the automobile exception. Latham was legally entitled to stand next to Caulder's car as part of his investigatory stop. He then observed a bottle of liquor in the cupholder and a gun on the front seat. (D.N. 28, PageID # 65–66) The officer observed that Caulder was likely intoxicated and saw that the handgun was within his reach. (*Id.*) Under these circumstances, Officer Latham was entitled to "at least temporarily seize th[e] weapon" out of a well-founded concern for his own safety. *Bishop*, 338 F.3d at 628 (finding that officer safety concerns justified warrantless seizure of gun in unattended car); *see also United States v. Atchley*, 474 F.3d 840, 850 (6th Cir. 2007) ("even if a loaded handgun is legally possessed, because of its inherently dangerous nature, police may seize it if there are articulable facts demonstrating that it poses a danger.").

Latham was also justified in believing that there could be either other guns in the car or additional evidence of DUI, and his warrantless entry and seizure were therefore permitted under the automobile exception. *See United States v. Black*, 240 F. App'x 95, 101–02 (6th Cir. 2007)

(holding in the alternative that the automobile exception justified warrantless search and seizure of defendant's car when the officers observed a liquor bottle and smelled alcohol, giving probable cause for arrest on open-container violation or DUI); *see also United States v. Pearce*, 531 F.3d 374, 381–82 (6th Cir. 2008) (finding that officer's observation of a gun magazine in plain view of passenger-side floorboard of car defendant had just exited meant "the police clearly had probable cause to arrest [defendant] and search vehicle").

In sum, the Court finds that the seizure was permissible under the "officer safety" factor of the *Terry* analysis, the plain-view exception, or the automobile exception to the general prohibition against warrantless searches.

D. Probable Cause to Arrest

Although the issue of probable cause was not argued extensively by either party, having determined that the gun and liquor will not be suppressed, the Court finds that Latham had probable cause to arrest Caulder for DUI. Ky. Rev. Stat. § 189A.010. A finding of probable cause "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Gates*, 462 U.S. at 244 n.13. Here, Caulder's vehicle matched the description from a tip indicating that someone was driving a black Ford Fusion, apparently drunk, and smashing into parked cars. (D.N. 28, PageID # 61) Latham observed precisely that type of vehicle, very early in the morning, bearing front-end damage consistent with striking parked cars, driving erratically. (*Id*., PageID # 63) He then observed the bottle of liquor in plain view in the cup holder. (D.N. 23, 00:14–00:17) *See United States v. Sweeney*, 402 F. App'x 37, 39 (6th Cir. 2010) (affirming that officer's observation of liquor bottle in plain view supported legal arrest for open container violation). He spoke with Caulder, whose speech was incoherent and rambling, and who admitted that he had been drinking earlier in the evening. (D.N. 23, 01:27–02:03) Caulder also refused to

follow Latham's instructions to keep his hands still, which could have given Latham cause to fear for his safety. Considering the totality of the circumstances, as it must, the Court concludes that Latham had probable cause to arrest Caulder for DUI.

III.

Latham's initial stop was supported by reasonable suspicion, and the subsequent seizure of the gun and arrest of Caulder were equally justified. The Court finds that Latham's detention of Caulder, search of his vehicle, seizure of the gun and liquor, and subsequent arrest did not violate Caulder's Fourth Amendment rights, and therefore the resulting evidence need not be suppressed. Accordingly, and the Court being otherwise sufficiently advised, it is hereby

ORDERED that Caulder's motion to suppress evidence collected from the November 8 stop (D.N. 20) is **DENIED**. A pretrial conference will be set by subsequent order.

October 10, 2019

David J. Hale, Judge
United States District Court